

Sengunthar Trust

Vs

Bangalore Development Authority and Others

Civil Appeal No. 5030 of 1990

(Dr. T.K. Thommen, V. Ramaswami-II, R.M. Sahai JJ)

25.11.1992

JUDGMENT

R. M. SAHAI, J. –

1. This appeal is directed against the judgment and order of the Karnataka High Court. The appellant, a public and charitable trust, was allotted a civic amenity site in 1977 for purpose of construction of a temple and a Kalyan Mandapam. When the Trust started some activities on the land in dispute a writ petition, in public interest, was filed by some of the residents of the locality claiming that the plot having been reserved for civic amenity the Bangalore Development Authority acted illegally and in violation of the provisions of the Bangalore Development Authority Act, 1976 in making allotment in favour of the appellant. The petition was dismissed by a learned Single Judge. But the Division Bench allowed it, set aside the resolution of allotment and directed the Bangalore Development Authority to refund the amount paid in respect of the allotment to the second respondent. The High Court held that allotment for purposes of Kalyan Mandapam may have been a public convenience but it was not a civic amenity or amenity under clauses (bb) and (b) of Section 2 of the Act. It further agreed with the observation of an earlier Division Bench that an area reserved for a specific purpose could not be transferred to a trust as the benefit which could have been derived by the public by the plot reserved for civic amenity could not be transferred for a different use than for which it was reserved.

2. Shri Krishnamurthy Iyer, the learned counsel for appellant, has assailed the correctness of this order on various grounds. In was urged by him that civic amenity having been defined statutorily in 1988 to include allotment in favour of a public charitable or religious trust for purposes of social, educational or religious activities the allotment in favour of the appellant was in accordance with law. Reliance was placed on Section 38-A, introduced in 1991 which empowers the development authority to transfer or sell any property reserved for amenity or civic amenity. The learned counsel submitted that even though the amendment was effected in 1988 and there was no such provision on the date when the allotment was made yet it being clarificatory in nature it should be deemed to have existed even earlier and, therefore, the allotment did not suffer from any error of law. The learned counsel attempted to distinguish the decision of this Court in Bangalore Medical Trust v. B. S. Muddappa [(1991) 4 SCC 54].

3. We have given careful consideration to the submission made by the learned counsel. We are of the opinion that it is not necessary to decide the various arguments advanced on behalf of the appellant as, in our opinion, the case is squarely covered by the decision given by this Court in Bangalore Medical Trust [(1991) 4 SCC 54]. The High Court order, therefore, does not suffer from any error of law.

4. In the result this appeal fails and is dismissed. There shall be no order as to costs. But we leave it open to the appellant to approach the Bangalore Development Authority for allotment of another plot at an appropriate place. We are sure that if the application is made it shall be considered and decided in accordance with law.

</html